

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1130

UNITED STATES COURT OF APPEALS

For the Second Circuit

—oOo—

UNITED STATES OF AMERICA,

Appellee,

-against-

LOUIS SORRENTINO,

Defendant-Appellant.

*B
P/s*

APPENDIX TO BRIEF OF DEFENDANT-APPELLANT

BERNARD KENNY
Attorney for Appellant
22 East 40th Street
New York, N. Y. 10016
(212) 889-8028

Jeffrey S. Stephens
William J. Ryan

Of Counsel



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JOVENILE

03

U.S. MAG. 76-207
CASE NO.

21:8-16

21:812, 8-11

Offenses Charged
 Consp. to viol. Fed. Narco. Laws.
 Possess. & distr. of Cocaine H.

ORIGINAL COUNTS

1

2

NAME	AMT	Engine
Gender	Sex	Personal History
		Stature
Weight	Color	Complexion
Build	Age	Birth Date
		Birth Place
Marital Status	Education	Occupation
Religion	Political Party	Other

KEY DATES & INTERVALS

[illegible]

MAGISTRATE

SEARCH ☐ SEARCHED INDEXED ☐ INDEXED SERIALIZED ☐ SERIALIZED FILED ☐ FILED MAR 13 1976 FBI - NEW YORK		DATE 2/13/76	INITIAL NO LB-080H	MAGISTRATE INITIAL APPEARANCE DATE > 2/25/76 PRELIMINARY EXAMINATION ☐ Date Scheduled > 3/16/76 OR REMOVAL ☐ Date Filed > HEARING ☐	INITIAL NO. > MDJ-080B	OUTCOME ☐ HELD FOR G. O. OR OTHER PROCEEDING IN DISTRICT COURT ☐ HELD FOR G. O. OR OTHER PROCEEDING IN DISTRICT COURT
OFFENSE 21 USC 812, 841(a)(1), 841(b)(1)(A) and 846 - NARCOTICS		2/13/76	LB-080H	☐ WAIVED ☒ NOT WAIVED ☐ INTERVENING PROCEEDMENT	300 Number	

ATTORNEYS ☐ Counsel ☐ Co-A. ☐ Rep ☐ W. v. ☐ S. ☐ N. ☐ O. / Other ☐ P. ☐ C.

Federico E. Virella, Jr.
791-1984

James Giff
-1373

259

02-GREEN, 03-LATE, -64-LATE

DATE	DOCUMENT NO.	PROCEEDINGS
2/13/76		Complaint filed, warrant issued
2/25/76		Defendant presented, represented by James Siff, Esq., 401 Broadway, N.Y. Defendant released until 2/26/76 to make \$7,500 cash of surety.
2/26/76		Defendant made \$7,500 surety bond with Midland Ins. Co., defendant's address: 888 - 8th Ave., N.Y.
7/6/76		Indictment filed, 76 Cr. 626
7-15-76		Deft. with Atty. present pleads not guilty. 10 days for motions. Bail \$7,500. cash / secured by Midland Ins. Co. continued. Case assigned to Judge Weinfeld.
7-27-76		Case called. Trial date set for Wed., Aug. 4, 1976 at 10:00 AM in Rm. 313. Weinfeld, J.
7-28-76		Filed defts. memorandum of law.
8-3-76		Filed one envelope ordered sealed and impounded, and placed in vault in Cashier's office and not be opened until further order of this court. So ordered, Weinfeld, J.

(Over)

BEST COPY AVAILABLE

76
 Filed deft's affid & notice of motion for an order granting the deft certain discovery, Requiring the Govt to provide the deft with a B/P R quiring the Govt to furnish the deft in advance trial with a list of the witnesses it intends to call together with certain info. about each. Requiring the Govt to notify the defense whether it intends to use the deft in cross exam.

3-4-76 Case called, Govt's application for adj as so deft is granted till Monday 8-16-76 at 10:00AM in room 518....Weinfeld, J.

3-13-76 Deft (aty present) appears deft waives his right to a speedy trial on the record. Trial adj to Thursday 8-26-76 at 10:00A.M in room 518. Deft's bail limits are ext to include the State of Fla. for 72 hours only. Deft is to notify his atty upon his return to N.Y. No in turn will notify the U.S. atty. Deft's bail limits prev. included Eastern & Southern District of N.Y. & also the States of Ohio & Penn...Weinfeld, J.

7-30-76 Filed memo end on motion fld 7-28-76 Motion disposed of as indicated etc.....Weinfeld, J. M/N

8-26-76 Filed Affidvt. of Ronald L. Garnett in support of a writ. Ret. 9-8-76.

9-8-76 Jury trial begun before Weinfeld, J.

9-9-76 Jury trial cntd. and concluded. Guilty verdict as to cts. 1 and 2. PSI ordered. Sentence adj. to Thursday, Sept. 30, 1976 at 10am in Rm. 906. Bail contd. as previously fixed by Mag. at \$7,500 cash or surety. Weinfeld, J.

9-30-76 Filed JUDGMENT (atty. James Siff, present)-- the deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of THREE(3) YEARS on each of cts. one and two (1) & (2) to run concurrently with each other. Pursuant to the provisions of Title 21, USC, 841, the deft. is placed on Special Parole for a term of THREE(3) YEARS to commence upon expiration of confinement. Deft. is contd. on bail pending appeal on condition that the appeal is filed expeditiously. Trial minutes are to be filed forthwith and subject to the approval of the of Appeal the case is set for argument within 30 days. Weinfeld, J. (copies issued)

10-08-76 Filed Notice of Appeal from judgment dtd 9-30-76

10-13-76 Filed Transcript of record of proceedings, dated 8-23-76.

10-15-76 Filed Transcript of record of proceedings, dated 9-8, 9-76

10-15-76 Filed Transcript of record of proceedings, dated 9-30-76.

FILE AND RECEIPT ON PAYMENTS

DATE	PROPERTY NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

73

6 (E.W.)

U.S.A. vs. Louis Sorrentino, ET.AL.

Rev. Civil Docket Continuation

PROCEEDINGS

Date
Judge

10-28-76 Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A.

11-19-76 Filed Transcript of record of proceedings, dated 8-4-76

11-19-76 Filed Transcript of record of proceedings, dated 8-25-76

1-21-77 Filed true copy of USCA order affirming the Judgment of the District Court ... Judgment entered on 1-24-77.... Clerk M/N

02-15-77 B/W issued.

02-16-77 Filed letter from the Clerk USCA dtd 02-14-77 that the Mandate issued to the D C on 01-19-77 is recalled in accordance with order of USCA (copy of same, see next entry)

02-16-77 Filed true copy of USCA order that the motion made by counsel for the appellant dtd 02-02-77 to recall the mandate and stay its reissuance and continue bail and for leave to file today a petition for rehearing with suggestions for rehearing en banc is granted, except for the application for continuation of bail, which is denied - m/n

2-18-77 Filed deft's memorandum of law in support of the motion for a new trial

2-18-77 Filed affidavit & notice of motion for a new trial ret 3-1-77

2-23-77 Filed Writ of Habeas Corpus Ad Pros. ret 3-1-77

3-1-77 Deft's supplemental memorandum of law in support of deft's motion for a new trial

3-1-77 Filed govt's memorandum in opposition to deft's motion for a new trial pursuant to Rule 33 of the Fed Rules of Crim Proc.

3-1-77 Filed affidavit of AUSA Garnett in opposition to deft's motion pursuant to Rule 33

3-1-77 Affidavit submitted & entered return, with certificate WARREN M.C.C. N-76

3-2-77 ON 2-23-77

3-2-77 Filed memo and on motion filed 2-18-77 - Motion denied as per oral opinion at argument... so ordered Weinfield, J. M/N

3-11-77 Filed notice of appeal from order filed 3-2-77 Filed notice to U.S. Atty

Wynne T. Wynne

MASTERS' ASSISTANT U.S. DISTRICT COURT
1902

01 - CORRECTIONS

PROCEEDINGS

DATE	
3-22-77	Fld consent order that the entire record is required in the U.S.D.C. of N.Y. & the clerk of said Court shall retain the entire record subject to the request of the U.S. Court of Appeals. Ordered that the Clerk of the U.S. D.C. for the S.D.N.Y. shall transmit a certified copy of this order & the docket entries of this matter to the Clerk of the U.S. Court of Appeals....WEinfeld, J. (Copy sent to Court of Appeals)
3-31-77	Filed sealed envelope (placed in cashiers vault)
3-31-77	Filed memon on end on motion fld 3-31-77 for reduction of sentence is GRANTEDWEinfeld, J. <i>WPN</i>
3-31-77	Filed AMENDED JUDGMENT & COMMITMENT The Judgment dated 9-30-70 is amended as follows. The debt is hereby committed to the custody of Atty General or his authorized representative for imprisonment for period of TWO (2) YEARS on each of Counts 1 & 2 to run concurrently with each other. Pursuant to the provisions of T.21 U.S.C. 841 the debt is placed on SPECIAL PAROLE for a term of THREE (3) years to commence upon expiration of confinement...WEinfeld, J. Issued
4-5-77	<i>Wynne T. Wynne</i> DELIV. A. COPY TO M.C.C. N.Y.C. ON 4-5-77

D

A TRUE COPY
RAYMOND F. BURCHETT, CLERK
BY *[Signature]*

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

76 Cr.626(EW)

-against-

NOTICE OF MOTION
FOR A NEW TRIAL

LOUIS SORRENTINO,

Defendant.

S I R :

PLEASE TAKE NOTICE that upon the affidavit of Bernard Kenny, Esq., sworn to the 18th day of February, 1977, and the affidavit of James E. Siff, Esq., sworn to the 8th day of February, 1977, and all the papers and proceedings heretofore had herein, the undersigned will move this Court on ^{MARCH 1} ~~February~~ 28, 1977, at ^{2:15} ~~10:00~~ in the ^{after} ~~forenoon~~ of that day or as soon thereafter as counsel can be heard for an Order directing a hearing of the issues raised in this motion for a new trial, and for an Order pursuant to Rule 33 of the Federal Rules of Criminal Procedure granting a new trial to this defendant, or in the alternative, granting a writ of habeas corpus.

Yours, etc.,

BERNARD KENNY

Attorney for Defendant

Suite 1718

22 East 40th Street

New York, N.Y. 10016

TO:

ROBERT B. FISKE, JR.

U.S. Attorney for the

Southern District of New York

One St. Andrews Place

New York, New York 10007

MAR 1 1977

MOTION DENIED AS PER ORAL
OPINION AT ARGUMENT

ORDERED:
[Signature]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
MAR 11 12:17 PM '77
S.D. OF N.Y.

UNITED STATES OF AMERICA,

: 76 Cr. 626 (RM)

-against-

: NOTICE OF APPEAL

LOUIS SORRENTINO,

:

Defendant.

:

S I R :

Notice is hereby given that Louis Sorrentino, the above-named defendant, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of Hon. Edward Weinfeld, Judge, United States District Court for the Southern District of New York, denying defendant's request for a new trial, which Order was entered in the Office of the Clerk of said Court under Docket Number 76 Cr. 626 (RM) on the 2nd day of March, 1977, and from each and every part thereof.

Dated: New York, New York
March 8, 1977

Yours, etc.,

TO:

Clerk
United States District Court
for the Southern District
of New York

BERNARD HENRY
Attorney for Defendant
Suite 1710
22 East 40th Street
New York, N.Y. 10018
Tel. No. 689-8926

Robert B. Nisko, Jr.
U.S. Attorney for the Southern
District of New York
One St. Andrew Place
New York, New York 10007

1 cmds

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA, :

6 -vs- :

76 Cr. 626

7 LOUIS SORRENTINO, et al., :

8 Defendants :

9 -----x

10 B E F O R E :

11 HON. EDWARD WEINFELD,
 District Judge

12
13 New York, New York
14 July 27, 1976--

15
16 A P P E A R A N C E S:

17 ROBERT B. FISKE, JR., ESQ.,
 United States Attorney for the
18 Southern District of New York
 BY: FEDERICO VIRELLA, ESQ.,
19 Assistant United States Attorney

20 JAMES EVANS SIFF, ESQ.,
 Attorney for Defendant Sorrentino

21 ROLAND THAU, ESQ.,
22 Attorney for Defendant Richard Tate

23 HERBERT K. LIPPMAN, ESQ.,
24 Attorney for Defendant Albert Green

25

1 cmds

2

2 (In open court)

3 THE CLERK: Next matter, the United States
4 of America vs. Louis Sorrentino, Richard Tate, Albert Green.

5 Is the government ready?

6 MR. VIRELLA: The government is ready, your
7 Honor.

8 THE CLERK: Are the defendants ready?

9 THE COURT: Who represents the defendant
10 Tate?

11 MR. VIRELLA: It is Mr. Ned Chase, your Honor,
12 of the Legal Aid Society. I think Mr. --

13 THE COURT: Why isn't he here?

14 MR. VIRELLA: I think Mr. Thau is going to
15 stand in for him this afternoon.

16 THE COURT: Where is Mr. Thau?

17 MR. VIRELLA: He just left.

18 THE CLERK: Mr. Thau is gone. He is not out-
19 side, your Honor.

20 THE COURT: Who represents Albert Green?

21 MR. LIPPMAN: I do, your Honor.

22 THE COURT: Will you state your name for the
23 record.

24 MR. LIPPMAN: Herbert K. Lippman, 45 Rockefeller
25 Plaza.

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THE COURT: Who represents defendant Sorrentino?

MR. SIFF: I do, your Honor. James Siff,

401 Broadway, New York.

THE COURT: And you made a motion, your motion is on today.

MR. SIFF: Yes, your Honor.

THE COURT: Who is the lawyer who called chambers?

MR. SIFF: That was me, your Honor.

THE COURT: Well, now, is your client here?

MR. SIFF: Yes, your Honor.

THE COURT: Is your client aware of your difficulty?

MR. SIFF: Completely, your Honor.

THE COURT: Where is the defendant Sorrentino? Would you come forward, please.

Now, Mr. Siff, have you acquainted your client with the personal problem --

MR. SIFF: Thoroughly, your Honor, and in detail.

THE COURT: You have. Your own situation?

MR. SIFF: Yes, your Honor.

THE COURT: And Mr. Sorrentino, are you aware of the fact that your lawyer is in difficulty himself, he

1 cmds

4

2 is under indictment?

3 DEFENDANT SORRENTINO: Yes, your Honor.

4 THE COURT: Would that make any difference
5 as far as your desire to have him represent you? You say
6 no, that would not make any different, but you are prepared
7 to have him represent you in connection with this charge?

8 DEFENDANT SORRENTINO: Yes.

9 THE COURT: You do not desire another lawyer?

10 DEFENDANT SORRENTINO: No.

11 THE COURT: Now, under the six-month rule
12 this case, the six months expire, I believe, on August 12;
13 is that correct?

14 MR. VIRELLA: That is correct, your Honor.

15 As to the defendants --

16 THE COURT: Why was this not moved earlier?

17 MR. VIRELLA: Your Honor, we had -- there
18 was another investigation dealing with one of the defendants
19 who has been indicated in this case, and he was consequently
20 arrested less than a month ago.

21 THE COURT: Well, under the rule I have to
22 put the case down so there will be no violation of the six
23 months rule, and actually start it.

24 Now, Mr. Siff has made a motion. Have you
25 conferred with Mr. Siff? Mr. Siff, have you conferred with

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

000 001 002 003 004 005 006 007 008 009 010 011 012 013 014 015 016 017 018 019 020 021 022 023 024 025 026 027 028 029 030 031 032 033 034 035 036 037 038 039 040 041 042 043 044 045 046 047 048 049 050 051 052 053 054 055 056 057 058 059 060 061 062 063 064 065 066 067 068 069 070 071 072 073 074 075 076 077 078 079 080 081 082 083 084 085 086 087 088 089 090 091 092 093 094 095 096 097 098 099 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018

UNITED STATES OF AMERICA, : 76 Cr.626(EW)
 :
 : -against- : NOTICE OF MOTION
 : FOR A NEW TRIAL
 LOUIS SORRENTINO, :
 :
 Defendant. :

S I R :

PLEASE TAKE NOTICE that upon the affidavit of Bernard Kenny, Esq., sworn to the 18th day of February, 1977, and the affidavit of James E. Siff, Esq., sworn to the 8th day of February, 1977, and all the papers and proceedings heretofore had herein, the undersigned will move this Court on February 28, 1977, at 10:00 in the forenoon of that day or as soon thereafter as counsel can be heard for an Order directing a hearing of the issues raised in this motion for a new trial, and for an Order pursuant to Rule 33 of the Federal Rules of Criminal Procedure granting a new trial to this defendant, or in the alternative, granting a writ of habeas corpus.

Yours, etc.,

BERNARD KENNY
Attorney for Defendant
Suite 1718
22 East 40th Street
New York, N.Y. 10016

TO:
ROBERT B. FISKE, JR.
U.S. Attorney for the
Southern District of New York
One St. Andrews Place
New York, New York 10007

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,	:	76 Cr. 626(EW)
-against-	:	AFFIDAVIT IN SUPPORT OF
	:	<u>MOTION FOR A NEW TRIAL</u>
LOUIS SORRENTINO,	:	
	:	
Defendant,	:	

-----x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

BERNARD KENNY, being duly sworn, deposes and says:

Your deponent is an attorney duly admitted to practice before this Court, and makes this affidavit in support of the within motion for a new trial.

Your deponent represents Louis Sorrentino, the defendant herein, who was represented at the time of the trial by James E. Siff, a former member of the Bar.

Sorrentino was tried before the Hon. Edward Weinfeld, United States District Judge, and a jury, on September 8 and 9, 1976, in the United States District Court for the Southern District of New York, and was convicted on two counts contained in Indictment 76 Cr.626.

The defendant was convicted of having conspired to distribute cocaine, in violation of Title 21, United States Code,

Section 846, and with having distributed and possessed, with the intent to distribute, approximately 55.94 grams of cocaine, in violation of Title 21, United States Code Sections 812, 841(a)(1) and 841(b)(1)(A).

This motion, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, is based upon defendant's contention that he was denied his constitutional right to have the assistance of counsel for his defense by reason of the extraordinary circumstances existing with regard to his attorney at the time of trial, James E. Siff.

Your deponent has been recently retained to represent Mr. Sorrentino, following the denial of Mr. Sorrentino's appeal to the United States Court of Appeals for the Second Circuit, which appeal was based upon grounds unrelated to the instant motion. Said appeal was pursued by another attorney, Paul P. Rao, Jr., Esq.

As a result of a conversation had between your deponent and Mr. Siff, at Mr. Sorrentino's request, I have learned of certain difficulties which Mr. Siff was experiencing at the time he undertook the defense of this defendant. As is more fully set forth in Mr. Siff's affidavit which is annexed hereto and made a part of this motion, Mr. Siff, at the time of the Sorrentino trial, had been indicted himself for the possession of cocaine under Indictment 76 Cr. 666.

As Mr. Siff's affidavit points out, the charges pending against him at the time were brought by the Office of the United States Attorney for the Southern District of New York, the same prosecutor which had brought the charges against Mr. Sorrentino, and the evidence against him had been gathered by the same enforcement office as had investigated the case against Mr. Sorrentino. Furthermore, as Mr. Siff's affidavit indicates, he was in an extremely unstable, preoccupied and paranoid state of mind.

It is our contention that these circumstances were such as to deny the defendant Sorrentino the effective assistance of counsel at the time of his trial. The fact that Mr. Sorrentino was aware of the charges pending against Mr. Siff, and that he may have consented to Mr. Siff's continuing as his counsel, is not dispositive of this issue.

Mr. Sorrentino's consent to Mr. Siff's continued representation was not a valid waiver of his rights under the Sixth Amendment. It is apparent that Mr. Sorrentino would be willing to allow Mr. Siff to continue representing him, since Mr. Siff was the only lawyer with whom the defendant had discussed the case, and the defendant had confidence, at the time of trial, in Mr. Siff's abilities, as well as his familiarity with all of the facts and circumstances surrounding the charges against Sorrentino.

Mr. Sorrentino should not have been asked of whether or not Mr. Siff could render effective assistance to his defense, nor is it fair to assume Sorrentino fairly apprehended the manner and extent to which Mr. Siff's judgment at trial would have been affected by his personal difficulties. Mr. Sorrentino is a high school dropout who lacks the sophistication of legal knowledge necessary to make such a determination.

As Mr. Siff indicates in his affidavit, his judgment, at the time of the Sorrentino trial, was sorely affected by the surrounding events, and certain crucial decisions during the course of the trial may clearly have been motivated by a desire not to antagonize the offices of the prosecutor and the investigators who were involved in his own case. As Mr. Siff himself admits, his decision not to allow Mr. Sorrentino to testify was made despite Mr. Sorrentino's strenuous objections and stated desire to take the stand.

Accordingly, it is respectfully submitted that a new trial should be granted in this matter in the interests of justice.

Rule 33 specifically provides that a motion for a new trial based on any grounds other than newly discovered evidence, shall be made within 7 days after the verdict or finding of guilty, or within such further time as the Court may fix during that 7-day period. However, in the instant action, the defendant, Louis

Sorrentino, was still represented by James Siff, Esq., during that 7-day period, and as a result of the extenuating circumstances which form the basis of this motion, no application for a trial or an enlargement of time in which such application was to be made, was filed on behalf of this defendant.

Nevertheless, it is our position that in view of the fact that the denial of Mr. Sorrentino's right to the effective assistance of counsel raises a constitutional question, and in light of the evidence that Mr. Siff still represented the defendant for the critical period after the verdict, it is requested that this motion be considered a request for a new trial, as well as an application for an enlargement of the time in which such motion can be made in the interests of justice.

Furthermore, it is respectfully contended, in view of the numerous factual issues which are raised by this motion, that a hearing of these issues is indicated. The issues of Mr. Siff's competence as counsel, the status of his own plea bargaining at the time of Mr. Sorrentino's trial, Mr. Siff's state of mind as well as Mr. Sorrentino's ability to make a decision as to Mr. Siff continuing as counsel, should be fully explored at a hearing.

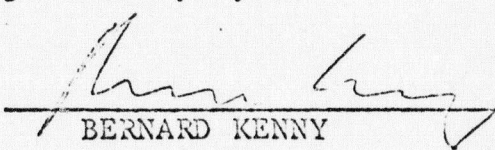
Therefore, it is requested that a hearing of the issues raised by this motion be held before a determination is made by the Court.

In the event that his Court denies the within relief on the ground that this motion has not been timely brought, or any other ground not relating to the issue of the denial to defendant of his right to the effective assistance of counsel, then in that event, it is respectfully requested that this Court grant a writ of habeus corpus on that issue in view of the egregious denial of defendant's Sixth Amendment rights as aforesaid. It is respectfully contended that the constitutional issues raised by this motion and the facts underlying same are such as to warrant the issuance of a writ of habeus corpus in this matter.

No application for this or similar relief has previously been made.

WHEREFORE, it is respectfully requested that the within application for a new trial be granted, and that a date for such new trial be set by this Court, and for such other and further relief as to this Court may seem just and proper.

Sworn to before me this 18th
day of February, 1977


BERNARD KENNY

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JEFFREY S. GORMAN
Notary Public, State of New York
No. 4883122 Comm. in Westchester Co.
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, : 76 Cr.626(EW)

-against- : AFFIDAVIT

LOUIS SORRENTINO, :

Defendant. :

-----x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

JAMES EVAN SIFF, being duly sworn, deposes and says:

I am a former member of the Bar of the State of New York and of this District, having resigned from same on November 13, 1976.

I was counsel for the defendant Sorrentino herein at all stages of the proceedings against him, through and including the trial on September 8 and 9, 1976, and sentencing on September 30, 1976.

Your deponent was indicted in this District under Indictment 76 Cr. 666 on July 21, 1976. Thereafter, on October 26, 1976, I entered a plea of guilty to a superseding information which charged possession of cocaine, as a misdemeanor.

I am providing this affidavit at the request of Bernard Kenny, Esq., Mr. Sorrentino's current counsel, for the purpose of providing the Court with information regarding my state of mind

and affairs at the time I represented Louis Sorrentino during the trial of the indictment against him, in connection with a motion I understand is being made on behalf of Mr. Sorrentino for a new trial. I trust that this affidavit will provide information helpful to this Court in making a determination as to my competence at the time of said trial.

At the time I tried the within action before Hon. Edward Weinfeld and a jury, on September 8, 1976, my own trial had been scheduled for October 10, 1976.

I had been aware of the efforts of the Drug Enforcement Administration to make a case against me since April 9, 1975. As part of the government's apparent plan to intimidate me, certain information regarding this investigation was "leaked" to me by a government informant on or about February 26, 1976. However, it was not until July, 1976, that I was indicted, as aforesaid.

From the time of my indictment, I lived in a state of constant depression regarding my future, both personal and professional. My difficulties were compounded by the fact that my fiancée broke our engagement and left me two days after my indictment, because of what she described as the disgrace and pressure of the matter. Hence, at the time of the Sorrentino trial, I was at a professional, emotional and psychological low.

From the time of the indictment in July, 1976, until my own case was finally terminated on December 10, 1976, I was for the most part sleepless, distraught and paranoid, and I was engrossed in concern over my own situation. Although I felt compelled to mask my fear and concern in dealings with colleagues and clients, I was nevertheless obsessed with the problems of my own fate.

Many people, including my own attorney, had questioned my decision with regard to my own plea, expressing the feeling that I had lost my desire to fight. It is for this Court to decide whether this concern affected my judgment and my ability to pursue Mr. Sorrentino's defense.

During the time of the Sorrentino trial, I was of course aware of the fact that the unit which was prosecuting Mr. Sorrentino was the same unit on my own case, and that the Drug Enforcement Agency which investigated Mr. Sorrentino's case, was the same group which had been investigating me and which would present evidence at my trial.

Accordingly, it is for this Court to determine whether these factors resulted in rendering me incompetent as matters of fact and law to represent Mr. Sorrentino in his trial. Specifically, whether or not there was a subconscious desire not to antagonize the prosecutors and drug agents, which may have entered

my decision making process in two crucial determinations, to wit, my decision not to cross-examine the government witnesses with regard to the occurrences at the scene of the crime and specifically with regard to the only witness who could actually place Mr. Sorrentino at the scene of the crime, and further, my decision not to put the defendant on the stand despite his vehement desire to testify in his own behalf.

When Judge Weinfeld was made aware of the charges pending against me, a hearing was held to determine if Mr. Sorrentino wished to have me continue as his defense counsel. Although Mr. Sorrentino was apprised of all of the surrounding circumstances concerning my indictment, it is nevertheless for this Court to determine whether or not Mr. Sorrentino was competent to make a determination as to whether or not he wanted to continue to retain me. He indicated to me that his decision to have me continue was based upon his confidence in me, my knowledge of his case and his trust in our relationship. However, he made this decision without the advice of outside counsel.

While Mr. Sorrentino and I may have believed that I was competent to represent him at the time of trial, it is for the Court to determine at this time whether I was able to render legal assistance and advice in his defense within a Sixth Amendment level of competence, and I have recited above facts to aid

the Court in the determination of that issue.

Sworn to before me this

^{7th} day of February, 1977.

Jeffrey S. Lewis

JEFFREY S. LEWIS
NOTARY PUBLIC, State of New York
NO. 51-7554125
Qualified in New York County
Term Expires March 30, 1978

JAMES EVAN SIFF

COPY RECEIVED
SEP 11 1977
ROBERT B. FISKE JR.
U.S. ATTORNEY
SO. DIST. OF N.Y.